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GREENBLUM BERNSTEIN

NOV 21 2012

002/022

Att'y Docket No. P20085

Customer No.: 07055

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

NOV 30 2012

Applicant : Jean-Claude MONGRENIER

Confirmation No. 3501

OFFICE OF PETITIONS

Appn. No. : 09/647,921

U.S. Patent No. 6,285,285

Filed : November 13, 2000

Issued: September 4, 2001

For : DEVICE FOR ASSOCIATING A CONTAINER AND A COMPUTERIZED  
DEVICE MONITORING ITS CONTENTS**REQUEST FOR RECONSIDERATION AND RENEWED PETITION TO ACCEPT  
DELAYED PAYMENT OF MAINTENANCE FEE UNDER 37 C.F.R. 1.378(b)**

Commissioner for Patents  
 U.S. Patent and Trademark Office  
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 Randolph Building  
 401 Dulany Street  
 Alexandria, VA 22314

## Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300 on 11/21/2012 (Date).

Typed or printed name of person signing this certificate:

Angie Reisfield  
 Signature: Angie Reisfield

Sir:

Pursuant to the September 21, 2012 dismissal of Petitioner's Petition under 37 C.F.R. 1.378(b) to Accept Delayed Payment of the Maintenance Fee Under 37 C.F.R. 1.378(b) due on the above-identified patent, Petitioner respectfully requests reconsideration of the Petitions Examiner's decision. As this request for reconsideration is being presented within two months of the September 21, 2012 decision date, i.e., by November 21, 2012, Petitioner requests reconsideration of the previous decision and granting of this renewed Petition, whereby the patent will not be considered as having been expired.

The above-identified patent was issued on September 4, 2001. The first maintenance fee was paid on March 3, 2005 and the second maintenance fee could have been paid with the surcharge set forth in 37 C.F.R. 1.362(e)(1) as late as September 4, 2009. Since the maintenance fee was not paid, the patent expired after midnight on September 4, 2009.

A petition to accept an unavoidably delayed payment of a maintenance fee was filed on February 1, 2012 and included:

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- (1) the required maintenance fee set forth in Section 1.20 (e) through (g);
- (2) the surcharge set forth in Section 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Concurrently herewith, Petitioner is submitting a payment in the amount of \$ 400.00 for this petition for reconsideration, as required in September 21, 2012 Decision on the Petition, and an exhaustive attempt to provide information in support of item (3), which the Petitions Examiner deemed lacking in the February 1, 2012 petition. Also provided with this request for reconsideration and renewed petition are verified statements from Mr. John Schmitt and Ms. Hélène Agniel.

***COMPLIANCE WITH REQUIREMENTS UNDER 37 C.F.R. 1.378(b)***

***(1) MAINTENANCE FEE***

The required second maintenance fee of \$2,850.00 as set forth in Section 1.20(f) was submitted on February 1, 2012. While the fee for the second maintenance fee has increased since the filing of the petition, Petitioner does not believe any additional fee is required for the pending matter. However, if additional fees are believed necessary, the Commissioner is authorized to charge such fees to the Deposit Account of the undersigned. The Deposit Account information is provided below.

***(2) SURCHARGE***

The required surcharge of \$700.00 as set forth in Section 1.20(i)(1) was submitted on February 1, 2012.

***(3) SHOWING OF UNAVOIDABLE DELAY***

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As corroborated in the attached Statements by Mr. John Schmitt, the principle of the French law firm Cabinet John Schmitt, and Ms. Hélène Agniel, an employee of the French law firm of Cabinet John Schmitt and in the attached redacted copy of the signed acknowledgment of Cabinet John Schmitt's responsibility for monitoring and paying all U.S. maintenance fees after January 2007 in U.S. patents obtained by the U.S. law firm of Greenblum & Bernstein, P.L.C. on behalf of Cabinet John Schmitt clients, the delay in paying the second maintenance fee was unavoidable and this request for reconsideration and grantable renewed petition was promptly prepared and submitted after the patentee was notified of the expiration of the patent.

The undersigned states that the delay in payment of the maintenance fee was unavoidable. This statement is based on information provided to the undersigned as outlined below:

The patentee engaged the French law firm of Cabinet John Schmitt to prepare and file a French patent application No. 98/04802 on April 14, 1998 and an International Application No. PCT/FR99/00850 on April 13, 1999 claiming the priority of the French application. The patentee desired to file a National Stage of International application in the U.S. Patent and Trademark Office, and Mr. John Schmitt contacted the law firm of Greenblum & Bernstein, P.L.C. [hereinafter "Greenblum & Bernstein"] to prepare the application and enter the U.S. national stage. Greenblum & Bernstein prosecuted the application until it matured into U.S. Patent No. 6,285,285 on September 4, 2001.

When U.S. Patent No. 6,285,285 was issued, Greenblum & Bernstein was responsible for docketing for and paying the maintenance fees. In 2004, Greenblum & Bernstein requested instructions from Cabinet John Schmitt for payment of the first maintenance fee. Cabinet John Schmitt instructed Greenblum & Bernstein to pay the first maintenance fee, and Greenblum & Bernstein paid the fee on March 3, 2005. On April 20, 2005, in reporting the payment of the first maintenance fee, Greenblum & Bernstein informed Cabinet John Schmitt that payment of the second maintenance fee would be due, without surcharge, by March 4, 2009.

In 2006, Greenblum & Bernstein sought to institute a change in their maintenance fee policy and on March 16, 2006 sent a letter to Cabinet John Schmitt informing the French law firm that, effective January 2007, Greenblum & Bernstein would no longer be responsible for the

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docketing and payment of U.S. maintenance fees. Moreover, Greenblum & Bernstein informed Cabinet John Schmitt that docket entries related to maintenance fees would be removed as of January 1, 2007 and that reminders would no longer be forward. Greenblum & Bernstein further informed Cabinet John Schmitt of several annuity services that could assist them in the docketing and payment of U.S. maintenance fees.

On March 29, 2006, Cabinet John Schmitt acknowledged the new Greenblum & Bernstein maintenance fee policy and that Cabinet John Schmitt would be responsible for monitoring and paying U.S. maintenance fees in patents obtained by Greenblum & Bernstein. A redacted copy of Cabinet John Schmitt's acknowledgement of Greenblum & Bernstein's the new policy and of Cabinet John Schmitt's responsibility for monitoring and paying U.S. maintenance fees is attached.

While exercising the due care and diligence a reasonably prudent person would have taken to ensure timely payment of the second U.S. maintenance fee, through a clerical error by Ms. Agniel in performing her normal duties (as set forth in greater detail below), a third party annuity service was not engaged with responsibility for the docketing and payment of the second and successive U.S. maintenance fees.

The patent owner, Biolog S.A., learned from a potential purchaser/licensee on November 22, 2011 that the patent had lapsed, and the patent owner contacted Cabinet John Schmitt on the same date requesting an explanation of the patent's status. Mr. John Schmitt contacted Greenblum & Bernstein by email dated November 22, 2011 asking whether U.S. Patent No. 6,285,285 could be revived. The undersigned replied to Mr. Schmitt's letter noting that, as the patent had been expired for more than 24 months, that a Petition for Acceptance of Delay Maintenance Fee in Expired Patent would be required under the unavoidable standard of 37 C.F.R. 1.378(b). Greenblum & Bernstein provided details of the petition and presented the requirements for making the showing that the delay was unavoidable.

Greenblum & Bernstein made inquiries to ascertain the relevant facts related to this matter to assist them in preparing this Petition, and promptly prepared this grantable petition for filing in the U.S. Patent and Trademark Office. Any delay from the time of discovery of expiration of the

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above-identified patent until the time of filing the instant petition was the result of the need to investigate and assemble the evidence necessary to file a grantable petition. The grantable Petition to Accept Delayed Payment of Maintenance Fee Under 37 C.F.R. 1.378(b) was filed February 1, 2012.

On September 21, 2012, a decision on the petition was received from the U.S. Patent and Trademark Office dismissing Petitioner's Petition and setting a two month due date for requesting reconsideration of the decision. Through further inquiry with Cabinet John Schmitt, a verified statement by Mr. John Schmitt and an updated verified statement by Ms. Hélène Agniel were prepared and are attached. These statements provide facts and information related to the circumstances surrounding the circumstances of Ms. Agniel's clerical error, which is the basis for Petitioner's showing of "unavoidable" delay in paying the second maintenance fee.

As noted in the September 21, 2012 decision on the petition, and in accordance with MPEP § 711.03(c)(II)(C)(2),

a delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

(Decision on Petition, p. 4, ll. 10 - 18).

Based upon the concurrently submitted verified statements, the following facts are provided to show that, in compliance with subparagraphs (A) – (C) of the above-noted MPEP § 711.03(c)(II)(C)(2), there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance, Ms. Agniel was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care, and an error by Ms. Agniel was the cause of the delay at issue.

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Mr. John Schmitt has been in the practice of law in France for 47 years. In the normal course of business, Cabinet John Schmitt handles directly or through foreign associates client matters in the United States and in other countries throughout the World. For many of these matters, annuity fees in non-U.S. matters and maintenance fees in U.S. patents are monitored by Cabinet John Schmitt.

For the past 34 years, Ms. Hélèn Agniel has been responsible for monitoring non-U.S. annuity fees and U.S. maintenance fees for Cabinet John Schmitt clients. Ms. Agniel was trained in the law firm's procedures for monitoring annuity and U.S. maintenance fees by Mr. John Schmitt to be aware of and react to receipt of the U.S. Letters Patent, receipt of a reminder for payment of the maintenance fee from an associate or third party annuity service, and receipt of instructions from the patent owner regarding payment of the maintenance fee. Ms. Agniel was additionally trained so that in the event files are transferred to Cabinet John Schmitt and Cabinet John Schmitt is to be responsible for payment of U.S. maintenance fees, she is responsible for compiling a listing of U.S. patents in the files and providing the patent information to Computer Patent Annuities (CPA), Cabinet John Schmitt's third party annuity service.

Ms. Agniel was also taught that, because the third party annuity service CPA is engaged with the responsibility for the docketing of maintenance fees and providing reminders, it is the policy of Cabinet John Schmitt that maintenance fee due dates are not entered into the Cabinet John Schmitt docketing system.

As set forth above, when U.S. Patent No. 6,285,285 was issued, Greenblum & Bernstein was responsible for docketing for and paying the maintenance fees. Thus, Cabinet John Schmitt was not responsible for monitoring the U.S. maintenance fee, and it was not necessary for Ms. Agniel to engage the services of CPA upon receipt of the U.S. Letters Patent. On March 16, 2006, which was subsequent to the payment of the first maintenance fee and to Greenblum & Bernstein's letter reporting the filing of the maintenance fee and the due date for filing the second maintenance fee, Greenblum & Bernstein informed Cabinet John Schmitt that, effective January 1, 2007, they would be instituting their new policy by which Greenblum & Bernstein would no longer be responsible for the docketing or payment of maintenance fees and would no longer forward reminders or other correspondence received from the U.S. Patent and Trademark Office regarding

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maintenance fees.

After receipt of the March 16, 2006 Greenblum & Bernstein letter, Ms. Agniel was instructed by Mr. John Schmitt to treat Greenblum & Bernstein's new policy as a transfer of files to Cabinet John Schmitt. According to firm policy, Ms. Agniel was instructed to compile a listing of all pending U.S. patents obtained by Greenblum & Bernstein on behalf of Cabinet John Schmitt and to instruct CPA to take responsibility for paying the maintenance fees. Ms. Agniel confirmed that the listing of patents was completed and that CPA had been instructed to take responsibility for docketing for and paying the maintenance fees in the listed patents.

After Ms. Agniel's confirmation that CPA was responsible for maintenance fees previously handled by Greenblum & Bernstein, John Schmitt returned a signed acknowledgment of Cabinet John Schmitt's responsibility for monitoring U.S. maintenance fees in all U.S. patents obtained by Greenblum & Bernstein for Cabinet John Schmitt clients on March 29, 2006.

After a representative of the patent owner, Biolog S.A. contacted Cabinet John Schmitt on November 22, 2011 requesting an explanation of the patent's status, Mr. John Schmitt instructed Ms. Agniel to check the status U.S. Patent No. 6,285,285 and whether CPA had been instructed to pay the second maintenance fee. In reviewing her records, Ms. Agniel found that through error U.S. Patent No. 6,285,285 was inadvertently omitted from her listing of Greenblum & Bernstein patents obtained for Cabinet John Schmitt clients. As a result of this error, CPA had not been instructed to take over the docketing and payment of the maintenance fees for U.S. Patent No. 6,285,285. In her 34 years being responsible for monitoring annuity fees and U.S. maintenance fees, the second maintenance fee in U.S. Patent No. 6,285,285 is the only fee not timely paid by Ms. Agniel.

In view of the foregoing, Petitioner submits that the facts set forth above and corroborated by the attached verified statements and redacted acknowledgment letter, show that the responsible party for monitoring and paying the second and subsequent U.S. maintenance fees for U.S. Patent No. 6,285,285 was Cabinet John Schmitt, and that, in addition to showing the delay resulted from Ms. Agniel's error in a clerical function, Petitioner has shown that the error was the cause of the delay, that there was a business routine in place for performing the clerical function that could be

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relied upon to avoid errors in its performance, and that Ms. Agniel was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon her represented the exercise of due care.

Further, the undersigned acknowledges the Petitions Examiner's questioning on page 3, lines 24 – 30 whether Greenblum & Bernstein retained any responsibility for payment of the second maintenance fee. As the attached redacted copy of the March 16, 2006 letter reveals, Greenblum & Bernstein's policy to no longer take responsibility for monitoring and paying U.S. maintenance fees and to no longer forward reminders from the U.S. Patent and Trademark Office regarding maintenance fees was clearly and unambiguously presented to Cabinet John Schmitt. Moreover, as evidenced by the attached redacted letter, this policy change and transfer of responsibility was acknowledged and agreed to by Mr. John Schmitt on March 29, 2006. Thus, the undersigned understands that the Petitions Examiner's consideration of Greenblum & Bernstein's policy is limited to a determination of whether Cabinet John Schmitt was aware of and accepted the responsibility for monitoring U.S. maintenance fees for patent obtained by Greenblum & Bernstein and not to the particulars of Greenblum & Bernstein's policy, which was implemented to reduce its exposure to foreseeable liability risks. Accordingly, the undersigned submits that the redacted letter provides sufficient information to show that Cabinet John Schmitt had agreed to take over responsibility for U.S. maintenance fees from Greenblum & Bernstein and understood that Greenblum & Bernstein would not forward any reminders from the U.S. Patent and Trademark Office related to maintenance fees.

### CONCLUSION

Due to the circumstances described, the missed payment of the second maintenance fee was caused by circumstances which were entirely unavoidable. Furthermore, for the reasons given *supra*, the instant petition was filed promptly.

Accordingly, acceptance of the delayed payment of the maintenance fee due on the above-identified patent is respectfully requested, whereby the patent will not be considered as having been expired.

The Commissioner is hereby authorized to charge any additional fees, or credit any

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overpayment to Deposit Account No. 19-0089.

Respectfully submitted,  
Jean-Claude MONGRENIER

/Robert W. Mueller/ Reg. No. 35,043  
Robert W. Mueller

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Neil F. Greenblum  
Reg. No. 28,394

November 21, 2012  
GREENBLUM & BERNSTEIN  
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Reston, VA 20191  
(703) 716-1191  
(703) 716-1180 (fax)

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant : Jean-Claude MONGRENIER

Confirmation No. 3501

*NOV 30 2012*

Appln. No. : 09/647,921

U.S. Patent No. 6,285,285 *OFFICE OF PETITIONS*

Filed : November 13, 2000

Issued: September 4, 2001

For : DEVICE FOR ASSOCIATING A CONTAINER AND A COMPUTERIZED  
DEVICE MONITORING ITS CONTENTS**VERIFIED STATEMENT BY HÉLÈNE AGNIEL IN SUPPORT OF RENEWED  
PETITION TO ACCEPT DELAYED PAYMENT OF MAINTENANCE FEE UNDER 37  
C.F.R. 1.378(b)**

Commissioner for Patents  
 U.S. Patent and Trademark Office  
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 Randolph Building  
 401 Dulany Street  
 Alexandria, VA 22314

Sir:

I, Hélène Agniel, make the following statements as to my personal involvement with the above-captioned application.

(1) I have been employed by the French law firm of Cabinet John Schmitt, located at 9, rue Pizay, 69001 Lyon, France, for 3½ years.

(2) In the course of my duties to Cabinet John Schmitt, I am responsible for monitoring annuity fees for non-U.S. applications and patents and maintenance fees for U.S. patents.

(3) When I began monitoring annuity and maintenance fees, I was trained by Mr. John Schmitt in the firm procedures for monitoring annuity and maintenance fees. In particular,

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I was taught that, when Cabinet John Schmitt is responsible for payment of U.S. maintenance fees, I must be aware of and react to three (3) actions, i.e., receipt of the U.S. Letters Patent, receipt of a reminder for payment of the maintenance fee from a third party annuity service, and receipt of instructions from the patent owner regarding payment of the maintenance fee.

(4) According to my training, upon receipt of the U.S. Letters Patent from our U.S. associate, I am to contact Computer Patent Annuities (CPA), our third party annuity service and provide the U.S. patent information and instructions for CPA to docket for payment, send reminders, and make payment of U.S. maintenance fees.

(5) I was also trained so that, when CPA sends a reminder for payment, the reminder is forwarded to the patent owner with an inquiry whether the U.S. maintenance fee is to be paid.

(6) When CPA does not receive instructions by a requested due date, I was made aware that CPA would send subsequent reminders followed, if necessary, by a final reminder, and that I am to forward these reminders to the patent owner with renewed inquiries whether the U.S. maintenance fee is to be paid.

(7) I was trained so that, when the patent owner provides instructions for payment, I contact CPA and provide instructions to pay the maintenance fee. I am also aware that CPA will not pay the maintenance fee without instructions to do so.

(8) In addition to being aware of and reacting to the three (3) actions noted above, I was also taught that, when files are transferred to Cabinet John Schmitt and Cabinet John

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Schmitt is to be responsible for payment of U.S. maintenance fees, I am responsible for compiling a listing of U.S. patents in the files and providing the patent information to CPA.

(9) As annuity payments are required for every non-U.S. application and patent and maintenance fees are required in every U.S. patent, in the course of my duties, I monitor payment of hundreds of annuity and maintenance fees due each year.

(10) Because CPA is charged with the responsibility for docketing and providing timely reminders regarding payment, I was informed, as a matter of firm policy, due dates for U.S. maintenance fee due dates are not to be recorded in our docketing database.

(11) In March of 2006, I was informed by Mr. Schmitt that one of our U.S. associates, Greenblum & Bernstein, P.L.C., would not be responsible for payment of U.S. maintenance fees beginning in January 2007 and that Cabinet John Schmitt would become responsible for U.S. maintenance fees due on all pending U.S. patents obtained by Greenblum & Bernstein, P.L.C. for clients of Cabinet John Schmitt after this date.

(12) Mr. John Schmitt instructed me to treat Greenblum & Bernstein's new policy as a transfer of files to Cabinet John Schmitt and to compile a listing of all pending U.S. patents obtained by Greenblum & Bernstein, P.L.C. for clients of Cabinet John Schmitt and to instruct CPA to take responsibility for paying the maintenance fees.

(13) Before January 2007, I informed CPA of the patent information for, what I believed at the time to be, all pending U.S. patents obtained by Greenblum & Bernstein, P.L.C.

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for clients of Cabinet John Schmitt and instructed CPA to docket for payment, send reminders, and make payment of U.S. maintenance fees for these files.

(14) I confirmed to Mr. John Schmitt that CPA had been instructed to take over maintenance fee payments for all pending U.S. patents obtained by Greenblum & Bernstein, P.L.C. for clients of Cabinet John Schmitt.

(15) On November 22, 2011, Mr. John Schmitt asked me whether we had instructed CPA to pay the maintenance fee for U.S. Patent No. 6,285,285.

(16) In reviewing my records, I found that U.S. Patent No. 6,285,285 was obtained by Greenblum & Bernstein, P.L.C, but that this patent was inadvertently not included in my listing of patents obtained by Greenblum & Bernstein, P.L.C. for Cabinet John Schmitt clients.

(17) As a result of my error, CPA had not been instructed to take over docketing and payment of maintenance fees for U.S. Patent No. 6,285,285.

(18) In the 34 years that I have been responsible for monitoring annuity fees and maintenance fees, the maintenance fee due in U.S. Patent No. 6,285,285 is the only payment that was not timely paid.

(19) Based upon my involvement in this matter, Mr. John Schmitt asked me to assist Greenblum & Bernstein, P.L.C. with the preparation and filing of such a petition, including making this statement regarding my knowledge of the facts related to this matter.

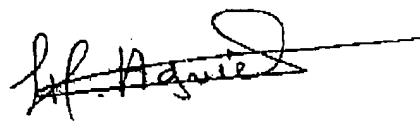
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(20) I hereby state that my failure to inform CPA of the second maintenance fee due date U.S. Patent No. 6,285,285 was an error that resulted in an unavoidable delay in paying the maintenance fee, and that after being inform by Mr. John Schmitt of the expiration of the patent, I acted diligently to assist in the preparation and prompt filing of this grantable petition under 37 C.F.R. 1.378(b).

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-captioned application or any patent issuing therefrom.

November 15, 2012  
(Date)



Helen Agniel

11/21/2012 17:33 FAX 7037161180

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Applicant : Jean-Claude MONGRENIER

Confirmation No. 3501

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Appln. No. : 09/647,921

U.S. Patent No. 6,285,285

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Filed : November 13, 2000

Issued: September 4, 2001

For : DEVICE FOR ASSOCIATING A CONTAINER AND A COMPUTERIZED  
DEVICE MONITORING ITS CONTENTS**VERIFIED STATEMENT BY JOHN SCHMITT IN SUPPORT OF RENEWED  
PETITION TO ACCEPT DELAYED PAYMENT OF MAINTENANCE FEE UNDER 37  
C.F.R. 1.378(b)**

Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop \_\_\_\_\_  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Sir:

I, John Schmitt, make the following statements as to my personal involvement with the above-captioned application.

(1) I am the principle of the French law firm of Cabinet John Schmitt, located at 9, rue Pizay, 69001 Lyon, France, and have been in practice of law in France for 47 years.

(2) I trained Hélène Agniel, an employee of my firm for 35 years, in my firm's procedures for monitoring annuity and maintenance fees. Ms. Agniel has been valued employee responsible for monitoring annuity and maintenance fees clients of Cabinet John Schmitt for 34 years.

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(3) In accordance with my firm's policy, Ms. Agniel was informed that Computer Patent Annuities (CPA) is our third party annuity service contractor and taught to provide the U.S. patent information and instructions for CPA to docket for payment, send reminders, and make payment of U.S. maintenance fees.

(4) In the course of her training, Ms. Agniel was taught that, when Cabinet John Schmitt was responsible for payment of U.S. maintenance fees, she must be aware of and react to three (3) actions, i.e., receipt of the U.S. Letters Patent, receipt of a reminder for payment of the maintenance fee from CPA, and receipt of instructions from the patent owner regarding payment of the maintenance fee.

(5) Ms. Agniel was also taught that, when files were transferred to Cabinet John Schmitt and Cabinet John Schmitt was to be responsible for payment of U.S. maintenance fees, she should compile a listing of pending U.S. patents in the files and provide such patent information to CPA.

(6) Because CPA is charged with the responsibility for docketing and providing timely reminders regarding payment, as a matter of firm policy, due dates for U.S. maintenance fee due dates are not recorded in our docketing database.

(7) I received a letter on March 16, 2006 from one of my U.S. associates, Greenblum & Bernstein, P.L.C., informing me that, effective January 2007, Greenblum & Bernstein, P.L.C. would no longer be responsible for docketing and payment of U.S. maintenance fees or for

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sending reminders or correspondence from the U.S. Patent and Trademark Office regarding maintenance fees.

(8) Prior to acknowledging the new Greenblum & Bernstein, P.L.C. maintenance fee policy, I instructed Ms Agniel to treat Greenblum & Bernstein's new policy as a transfer of files to Cabinet John Schmitt and to compile a listing of all pending U.S. patents obtained by Greenblum & Bernstein, P.L.C. for clients of Cabinet John Schmitt and to instruct CPA to take responsibility for paying the maintenance fees.

(9) Ms. Agniel confirmed to me that CPA had been instructed to take over maintenance fee payments for all pending U.S. patents obtained by Greenblum & Bernstein, P.L.C. for clients of Cabinet John Schmitt.

(10) On March 26, 2006, I acknowledged the new Greenblum & Bernstein, P.L.C. maintenance fee policy and that, as of January 2007, Cabinet John Schmitt would be responsible for monitoring and paying U.S. maintenance fees in patents obtained by Greenblum & Bernstein, P.L.C. for Cabinet John Schmitt clients.

(11) I was contacted on November 22, 2011 by a representative of the assignee Biolog, SA inquiring whether U.S. Patent No. 6,285,285 was still in force.

(12) I asked Ms. Agniel to check the status of U.S. Patent No. 6,285,285, and was informed that, according to her records, CPA was inadvertently not instructed to monitor this patent.

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(13) Upon finding the second maintenance fee was not paid, I contacted the law firm of Greenblum & Bernstein, P.L.C. on November 22, 2011 to inquire whether U.S. Patent No. 6,285,285 could be revived since the non-payment of the maintenance fees patent was the result of an error by Cabinet John Schmitt.

(14) On November 30, 2011, I was informed that, because the patent had lapsed more than 24 months earlier, it would be necessary to prepare and file a Petition to Accept Late Payment of Maintenance Fee under the unavoidable standard of 37 C.F.R. 1.378(b).

(15) Because of her knowledge of the matter, I asked Ms. Agniel to assist Greenblum & Bernstein, P.L.C. with the preparation and filing of such a petition, including making a statement regarding my knowledge of the facts related to this matter.

(16) I hereby state and acknowledge that an inadvertent error was committed by my employee in performing her normal duties by not instructing CPA of the second maintenance fee due date U.S. Patent No. 6,285,285, and that this error resulted in an unavoidable delay in paying the maintenance fee.

(17) After I was notified by the assignee of the expiration of the patent, I acted diligently to assist in the preparation and prompt filing of this grantable petition under 37 C.F.R. 1.378(b).

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these

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statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-captioned application or any patent issuing therefrom.

November 15, 2012  
(Date)

  
John Schmitt

March 16, 2006

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Please file, or have the vendor you select, file a Maintenance Fee Address change form for your cases and ensure that it is entered by the U.S. Patent and Trademark Office (USPTO). We will no longer forward any reminders or other correspondence received from the USPTO for these cases.

As of January 1, 2007 we will no longer be responsible for the maintenance and payment of U.S. Maintenance Fees, and will remove entries relating to the maintenance of U.S. patents from our docketing system. As the attorney or firm of record for matters other than payment of U.S. Maintenance Fees, we will continue to receive other post-issuance correspondence from the USPTO, such as notice of filing of reexamination requests.

This new policy will be effective January 1, 2007, allowing time for you to put a new system in place. Our correspondence in the next few months will reflect these changes. Therefore, any U.S. Maintenance Fee due on or after January 1, 2007 will not be paid by our firm and any docket entries relating to such fees will be immediately removed from our docketing system, such that we will not send you reminders for the same.

We will continue to monitor and pay annuities on foreign patents and foreign patent applications under those circumstances wherein we have been authorized to do so.

Please acknowledge receipt of this letter by returning it, signed, to our offices.

Please be assured that we will remain available for consultation if you require any post-issuance legal advice or assistance in determining whether to maintain any patents in force. Feel free to contact us with any questions you may have on this issue.

Very truly yours,  
GREENBLUM & BERNSTEIN, P.L.C.

Acknowledged by

Name:

Company:

Date:

**JOHN SCHMITT**

BAVETS MARQUES MODÈLES

9, Rue Pizay - 69001 LYON

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MAR 29 2006

GREENBLUM & BERNSTEIN PLC